IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.122 OF 2007
connected with
COMPANY APPLICATION NO.1119 OF 2006

Core Projects and Technologies Limited
.. Petitioner Company

Mr.Rishab Shah i.b Mr.Raval Shah for Petitiioner Company
Mr.C.J.Joy for RDC
Ms.K.V.Gautam, Dy.O.L.present

CORAM : DR.D.Y.CHANDRACHUD, J

DATED : 15th June, 2007

P.C.

1. The sanction of the Court is sought to a scheme of amalgamation under Sections 391 to 394 of the Companies Act, 1956. The petition before this Court is by the transferee company. The transferor is a company by the name of Software Technical Services Inc. and is incorporated in the State of Georgia in the U.S. The transferee company has convened a meeting of its share holders on 23rd December, 2006 at which a resolution in support of the proposed scheme was duly carried in accordance with law. The transferee has no secured or unsecured creditors.

2. The Regional Director has filed an affidavit on 6th June, 2007 raising the following objections :

> "(a) As transferor company is registered in the State of Georgia, Atlanta, USA, its dissolution without winding up is subject to that country's laws;
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> (b) In normal conditions the loss to transferee company as contributory is of $ 4,60,291 whereas on amalgamation the extra

liabilities taken over by the transferee company in addition is $ 10,46,467;

(c) For considering and sanctioning the Scheme of Amalgamation, necessary approval of RBI is also required. "

3. In so far as the first objection is concerned, the transferor is a wholly owned subsidiary of the transferee. The transferee company has produced on record a certificate of merger issued by the competent authority in the State of Georgia in the U.S. for sanctioning the amalgamation of the transferor company in accordance with the laws of the State of Georgia. A similar objection has also been considered and dealt with in a Judgment dated 28th April, 2006 of a learned Single Judge of this Court in the matter of Zenta Private Limited (Company Petition No.229 of 2006). In the judgment of the learned Single Judge, it has been held that the provisions of Sections 391 to 394 of the Companies Act, 1956 do not prohibit the amalgamation of a foreign corporate body with an Indian company. The first objection is therefore, without merit.

4. In so far as the second objection is concerned, the petitioner has filed an affidavit of its Company Secretary dated 15th June, 2007 in which the following averments have been made:

"In so far as the reference to the loss being incurred by the Transferee Company in the sum of US $ 4,60,291 is concerned, the said sum represents the equity contribution

> of the transferee company in the transferor company which gets cancelled. The extra liabilities in the sum of US $ 10,46,467 is concerned, the said sum represents the carried forward losses which will be set off against the profits of the transferee company. As per the balance sheet for the year ending 31 March 2006 the transferee company has made a profit after tax of Rs.5,08,93,148. In the consolidated financial statement the Profit After Tax is Rs.12,16,99,002. The loss on being absorbed by the Transferee Company was approximately Rs.4,70,91,015 (approximately the rate of conversion of US $ to INR Rs.45 at that time. Thus, the transferee company does not suffer any financial set back. "

The aforesaid averment which has not been controverted will show that the proposed scheme would not result in a financial set back to the transferee company.

5. In so far as the third objection is concerned, the attention of the Court is drawn to a circular issued by the Reserve Bank of India on 12th May, 2005 (A.P.DIR Series) Circular No.42). The circular which has been issued to all banks authorised to deal in foreign exchange enumerates terms of liberalisation of foreign investment by Indian companies. Under the automatic route for overseas investment, eligible Indian entities are now permitted to invest in overseas Joint Ventures (JVOs) up to 200 per cent of their net worth. In the affidavit of the Company Secretary of the transferee company dated 15th June, 2007 it has been stated that the net worth of the transferee company at the relevant time was Rs.3.12 crores.

The cost of acquisition of the transferor was equivalent to Rs.1.80 crores which was therefore within the permissible limits as set out in the circular of the Reserve Bank of India dated 12th May, 2005.

6. In the circumstances, the objections which have been raised by the Regional Director have been adequately answered.

7. All the requisite statutory requirements have been duly fulfilled. There is no other objection to the scheme of amalgamation other than those already dealt with hereinabove. The Court has been informed by learned counsel for the Regional Director that the scheme of amalgamation as proposed does not operate against the interest of the public or of the share holders, or creditors or employees.

8. In the circumstances, the Company Petition will have to be allowed and is accordingly made absolute in terms of prayer clauses (a) to (e).

(Dr.D.Y.Chandrachud, J)

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